

AMENDED IN SENATE JUNE 25, 2009

AMENDED IN ASSEMBLY MAY 6, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1009

Introduced by Assembly Member V. Manuel Perez

February 27, 2009

An act to amend Section 14030 of, and to add and repeal Section 14077 of, the Corporations Code, relating to small business, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1009, as amended, V. Manuel Perez. Small business: Direct Loan Program.

The California Small Business Financial Development Corporation Law authorizes the formation of small business financial development corporations to grant loans or loan guarantees for the purpose of stimulating small business development and imposes certain duties with respect thereto on a director designated by the Secretary of Business, Transportation and Housing. The California Small Business Expansion Fund, a continuously appropriated fund, provides funds to be used to pay for defaulted loan guarantees and administrative costs of these corporations.

This bill would require the secretary to develop and implement, until January 1, 2015, a Direct Loan Program to provide loans to small businesses meeting certain requirements. The bill would require the maximum loan limit to be \$500,000 ~~and would require all loans to have a guarantee from a federal agency or department~~. The bill would establish the Direct Loan Account in the California Small Business

Expansion Fund and would continuously appropriate all moneys in that account for purposes of implementing and administering the program. *The bill would authorize a public entity, as defined, to deposit moneys in this account in order to capitalize the program.* The bill would require the director, prior to distributing these funds to small businesses, to determine that the program is sufficiently capitalized. The bill would require the director to report annually on the activities of the program, as specified, and would also require the director, by a specified date, to submit to the Governor and the Legislature the results of an independent audit of the program.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14030 of the Corporations Code, as
2 amended by Section 1 of Chapter 601 of the Statutes of 2007, is
3 amended to read:
4 14030. (a) There is hereby created in the State Treasury the
5 California Small Business Expansion Fund. All or a portion of the
6 funds in the expansion fund may be paid out, with the approval of
7 the Department of Finance, to a lending institution or financial
8 company that will act as trustee of the funds. The expansion fund
9 and the trust fund shall be used to pay for defaulted loan guarantees
10 issued pursuant to Article 9 (commencing with Section 14070),
11 administrative costs of corporations, and those costs necessary to
12 protect a real property interest in a defaulted loan or guarantee.
13 The amount of guarantee liability outstanding at any one time shall
14 not exceed five times the amount of funds on deposit in the
15 expansion fund plus any receivables due from funds loaned from
16 the expansion fund to another fund in state government as directed
17 by the Department of Finance pursuant to a statute enacted by the
18 Legislature, including each of the trust fund accounts within the
19 trust fund.
20 (b) There is hereby created in the expansion fund the Direct
21 Loan Account. Notwithstanding Section 13340 of the Government
22 Code, all moneys in the Direct Loan Account shall be continuously
23 appropriated for the purposes of implementing and administering
24 the Direct Loan Program established pursuant to Section 14077.
25 *A public entity, with the approval of the director, may deposit*

1 *moneys in this account for the purpose of providing capitalization*
2 *for the Direct Loan Program pursuant to Section 14077. For the*
3 *purposes of this section, “public entity” means the state, the*
4 *Regents of the University of California, a county, city, city and*
5 *county, district, public authority, public agency, and any other*
6 *political subdivision or public corporation in the state or the United*
7 *States.*

8 (c) This section shall remain in effect only until January 1, 2013,
9 and as of that date is repealed, unless a later enacted statute, that
10 is enacted before January 1, 2013, deletes or extends that date. A
11 *public entity, with the approval of the director, may deposit moneys*
12 *in this account for the purpose of providing capitalization for the*
13 *Direct Loan Program pursuant to Section 14077. For the purposes*
14 *of this section, “public entity” means the State, the Regents of the*
15 *University of California, a county, city, city and county, district,*
16 *public authority, public agency, and any other political subdivision*
17 *or public corporation in the State or the United States.*

18 SEC. 2. Section 14030 of the Corporations Code, as added by
19 Section 2 of Chapter 601 of the Statutes of 2007, is amended to
20 read:

21 14030. (a) There is hereby created in the State Treasury the
22 California Small Business Expansion Fund. All or a portion of the
23 funds in the expansion fund may be paid out, with the approval of
24 the Department of Finance, to a lending institution or financial
25 company that will act as trustee of the funds. The expansion fund
26 and the trust fund shall be used to pay for defaulted loan guarantees
27 issued pursuant to Article 9 (commencing with Section 14070),
28 administrative costs of corporations, and those costs necessary to
29 protect a real property interest in a defaulted loan or guarantee.
30 The amount of guarantee liability outstanding at any one time shall
31 not exceed four times the amount of funds on deposit in the
32 expansion fund plus any receivables due from funds loaned from
33 the expansion fund to another fund in state government as directed
34 by the Department of Finance pursuant to a statute enacted by the
35 Legislature, including each of the trust fund accounts within the
36 trust fund, unless the director has permitted a higher leverage ratio
37 for an individual corporation pursuant to subdivision (b) of Section
38 14037.

39 (b) There is hereby created in the expansion fund the Direct
40 Loan Account. Notwithstanding Section 13340 of the Government

1 Code, all moneys in the Direct Loan Account shall be continuously
2 appropriated for the purposes of implementing and administering
3 the Direct Loan Program established pursuant to Section 14077.

4 (c) This section shall become operative on January 1, 2013.

5 SEC. 3. Section 14077 is added to the Corporations Code, to
6 read:

7 14077. (a) The secretary shall establish the Direct Loan
8 Program for the purpose of providing business loans directly to
9 qualified small businesses.

10 (b) The director shall provide for the development and
11 implementation of the application and the review process for the
12 program, including, but not limited to, defining the eligibility
13 standards, rating and ranking criteria, and other appropriate policies
14 and procedures for evaluating direct loans subject to the following
15 provisions:

16 (1) The maximum loan limit shall be five hundred thousand
17 dollars (\$500,000). ~~All direct loans shall have a guarantee from a~~
18 ~~federal agency or department.~~ *dollars (\$500,000).*

19 (2) All loan applicants shall demonstrate that they will have
20 reasonable access to business and management technical assistance
21 during the term of the loan.

22 (3) Loans may be provided at terms and conditions below market
23 to the extent that the overall revolving loan portion of the program
24 remains financially viable.

25 (4) Loans shall be provided to applicants demonstrating that
26 they cannot otherwise reasonably obtain a loan from a private
27 lender.

28 (5) Loans shall only be provided to applicants demonstrating
29 the ability to repay the loan.

30 (c) The director shall have the authority to administer the
31 distribution of funds from the Direct Loan Account created in
32 subdivision (b) of Section 14030. However, prior to distributing
33 these funds, the director shall make a determination that the Direct
34 Loan Program is sufficiently capitalized.

35 (d) To execute direct loans, the director may loan funds from
36 the Direct Loan Account to a corporation for the purpose of lending
37 those funds to an approved borrower.

38 (1) The loan authorized by the director to the corporation shall
39 be on terms similar to the loan between the corporation and the
40 borrower and shall be evidenced by a credit agreement.

1 (2) In the absence of fraud on the part of the corporation, the
2 liability of the corporation to repay the loan to the agency is limited
3 to the repayment received by the corporation from the borrower
4 except in a case where the federal guarantor requires exposure by
5 the corporation in rule or regulation.

6 (3) Interest and principal received by the agency from the
7 corporation shall be deposited into the Direct Loan Account.

8 (e) The director shall annually report on the activities of the
9 Direct Loan Program as part of his or her existing annual reporting
10 requirements.

11 (f) The director shall submit to the Governor and the Legislature
12 the results of an audit of the Direct Loan Program undertaken by
13 an independent entity. The independent audit shall cover the first
14 two full years of operation of the Direct Loan Program and it shall
15 be submitted no later than six months after the close of the second
16 full fiscal year of operation.

17 (g) This section shall remain in effect only until January 1, 2015,
18 and as of that date is repealed, unless a later enacted statute, that
19 is enacted before January 1, 2015, deletes or extends that date.